

House Bill 10

By: Representatives Levitas of the 82nd, Ramsey of the 72nd, Powell of the 29th, Talton of the 145th, O'Neal of the 146th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Article 2 of Chapter 3 of Title 35 the Official Code of Georgia Annotated, relating to the Georgia Crime Information Center, so as to provide access by private individuals, businesses, and governmental agencies to an individual's Georgia criminal history without such individual's consent or fingerprints; to change provisions relating to disclosure and dissemination of criminal records to private persons and businesses; to change provisions relating to disclosure and dissemination of records to public agencies and political subdivisions; to change provisions relating to fees; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 3 of Title 35 the Official Code of Georgia Annotated, relating to the Georgia Crime Information Center, is amended by revising Code Section 34-3-34, relating to disclosure and dissemination of criminal records to private persons and businesses, as follows:

"35-3-34.

(a) The center shall be authorized to:

(1) Make Georgia criminal history records maintained by the center available to private persons and businesses under the following conditions:

(A) Private individuals and businesses requesting Georgia criminal history records shall, at the time of the request, either provide the fingerprints of the person whose records are requested ~~or provide a signed consent of the person whose records are requested on a form prescribed by the center which shall include such person's full name, address, social security number, and date of birth~~ in such manner as prescribed by the center, which may include electronic imaging of a person's fingerprints, or provide sufficient information to identify the individual whose Georgia criminal history is being requested;

(B) The center ~~may~~ shall not provide records of arrests, charges, and sentences for crimes relating to first offenders pursuant to Article 3 of Chapter 8 of Title 42 in cases where offenders have been exonerated and discharged without court adjudications of guilt, except as specifically authorized by Code Section 35-3-34.1 or other law; ~~and~~

(C) The center shall not provide records of juveniles adjudicated delinquent or records otherwise protected from disclosure pursuant to law; and

~~(D)~~ (D) When the identifying information provided is sufficient to identify persons whose records are requested ~~electronically~~, the center may disseminate electronically Georgia criminal history records ~~of in-state felony convictions, pleas, and sentences~~ without:

(i) ~~Fingerprint~~ fingerprint comparison; or

(ii) ~~Consent~~ consent of the person whose records are requested; ~~or~~

(2) Make Georgia criminal history records of the defendant or witnesses in a criminal action available to counsel for the defendant upon receipt of a written request from the defendant's counsel under the following conditions:

(A) Such request shall contain the style of the case and the name and identifying information for each person whose records are requested. Such request shall be submitted to the center;

(B) In cases where the court has determined the defendant to be indigent, any fees authorized by law shall be waived; and

(C) Disclosure of criminal history information to the defendant's counsel as provided in this paragraph shall be solely in such counsel's capacity as an officer of the court. Any use of such information in a manner not authorized by law or the court in which such action is pending where the records were disclosed shall constitute a violation of Code Section 35-3-38; and

(3) Charge fees for disseminating records pursuant to this Code section which will raise an amount of revenue ~~which~~ that approximates, ~~as nearly as practicable, the direct and indirect~~ costs to the state for providing such disseminations.

(b) In the event that an employment decision is made adverse to a person whose ~~record~~ records ~~was~~ were obtained pursuant to this Code section, the person ~~will~~ shall be informed by the business or person making the adverse employment decision of all information pertinent to that decision. This disclosure shall include information that ~~a record was~~ records were obtained from the center, the specific contents of ~~the~~ such ~~record~~ records, and the effect ~~the record~~ such records had upon the decision. Failure to provide all such information to the person subject to the adverse decision shall be a misdemeanor.

(c) Neither the center, its employees, nor any agency or employee of the state shall be responsible for the accuracy of information nor have any liability for defamation, invasion

of privacy, negligence, or any other claim in connection with ~~the~~ any dissemination pursuant to this Code section and shall be immune from suit based upon any such claims.

(d) Local criminal justice agencies may disseminate Georgia criminal history records; without fingerprint comparison, ~~or~~ prior contact with the center, or consent of the person whose criminal records are requested to private individuals and businesses under the same conditions as set forth in paragraph (1) of subsection (a) of this Code section and may charge fees as needed to reimburse such agencies for their direct and indirect costs related to the providing of such disseminations. Such agencies shall have the same immunity as provided in subsection (c) of this Code section.

~~(d.1) Reserved.~~

~~(d.2) When identifying information provided is sufficient to identify persons whose records are requested, local criminal justice agencies may disseminate criminal history records of in-state felony convictions, pleas, and sentences without:~~

~~(1) Fingerprint comparison;~~

~~(2) Prior contact with the center; or~~

~~(3) Consent of the person whose records are requested.~~

~~Such information may be disseminated to private individuals and businesses under the conditions specified in subparagraph (a)(1)(B) of this Code section upon payment of the fee for the request and when the request is made upon a form prescribed by the center. Such agencies may charge and retain fees as needed to reimburse such agencies for the direct and indirect costs of providing such information and shall have the same immunity therefor as provided in subsection (c) of this Code section.~~

~~(d.3)~~(e) No fee charged pursuant to subsection (d) of this Code section ~~may~~ shall exceed \$20.00 per person whose criminal history ~~record is~~ records are requested or shall be charged to any person or entity authorized prior to January 1, 1995, to obtain information pursuant to this Code section without payment of such fee.

~~(d.4)~~(f) The center shall place a high priority on inquiries from any nuclear power facility requesting a criminal history and shall respond to such requests as expeditiously as possible, but in no event shall a response be made more than two business days following receipt of the request.

~~(e)~~(g)(1) The ~~Georgia Crime Information Center~~ center shall be authorized to provide criminal history records, wanted person records, and involuntary hospitalization records information to the Federal Bureau of Investigation in conjunction with the National Instant Criminal Background Check System in accordance with the federal Brady Handgun Violence Prevention Act, 18 U.S.C. Section 921, et seq.

(2) The records of the ~~Georgia Crime Information Center~~ center shall include information as to whether a person has been involuntarily hospitalized. Notwithstanding

any other provisions of law and in order to carry out the provisions of this Code section and Code Section 16-11-172, the ~~Georgia Crime Information Center~~ center shall be provided such information and no other mental health information from the involuntary hospitalization records of the probate courts concerning persons involuntarily hospitalized after March 22, 1995, in a manner agreed upon by the Probate Judges Training Council and the Georgia Bureau of Investigation to preserve the confidentiality of patients' rights in all other respects. Further, notwithstanding any other provisions of law and in order to carry out the provisions of this Code section and Code Section 16-11-172, the center shall be provided information as to whether a person has been adjudicated mentally incompetent to stand trial or not guilty by reason of insanity at the time of the crime, has been involuntarily hospitalized, or both from the records of the clerks of the superior courts concerning persons involuntarily hospitalized after March 22, 1995, in a manner agreed upon by The Council of Superior Court Clerks of Georgia and the Georgia Bureau of Investigation to preserve the confidentiality of patients' rights in all other respects. After five years have elapsed from the date that a person's involuntary hospitalization information has been received by the ~~Georgia Crime Information Center~~ center, the center shall purge its records of such information as soon as practicable and in any event purge such records within 30 days after the expiration of such five-year period.

~~(f)~~(h) The council is shall be empowered to adopt rules, regulations, and forms necessary to implement this Code section. The council shall promulgate regulations to ensure the identity, confidentiality, and security of all records and data provided in accordance with this Code section."

SECTION 2.

Said article is further amended by revising Code Section 35-3-35, relating to disclosure and dissemination of records to public agencies and political subdivisions, as follows:

"35-3-35.

(a) The center shall be authorized to:

(1) Make Georgia criminal history records maintained by the center available to public agencies, political subdivisions, authorities, and instrumentalities, including state or federal licensing and regulatory agencies or their designated representatives, under the following conditions:

(A) Public agencies or political subdivisions shall, at the time of the request, either provide the fingerprints of the person whose records are requested in such manner prescribed by the center, which may include the electronic imaging of a person's fingerprints, ~~or provide a signed consent of the person whose records are requested on~~

~~a form prescribed by the center which shall include such person's full name, address, social security number, and date of birth, provided, however, that the provisions of this paragraph shall supersede any other provision relating to the submission of fingerprints to the center or provide sufficient information to identify the individual whose Georgia criminal history is being requested;~~

(B) The center ~~may~~ shall not provide records of arrests, charges, or sentences for crimes relating to first offenders pursuant to Article 3 of Chapter 8 of Title 42 in cases where offenders have been exonerated and discharged without court adjudications of guilt, except as specifically authorized by Code Section 35-3-34.1 or other law; ~~and~~

(C) The center shall not provide records of juveniles adjudicated delinquent or records otherwise protected from disclosure pursuant to law; and

(D) When the identifying information provided is sufficient to identify persons whose records are requested ~~electronically~~, the center may disseminate electronically Georgia criminal history records of in-state felony convictions, pleas, and sentences without:

(i) ~~Fingerprint~~ fingerprint comparison; or

(ii) ~~Consent~~ consent of the person whose records are requested;

~~(1.1) Make criminal history records maintained by the center available to any county board of registrars or county board of registration and election. The making of an application for voter registration shall be deemed to be consent of the person making the application to release such records to the county board of registrars or county board of registration and election. Such records shall be requested for the sole purpose of verification of information provided on voter registration cards by registration applicants;~~

~~(1.2)~~(2) Make Georgia criminal history records maintained by the center and national criminal history records maintained by the Federal Bureau of Investigation, obtained by the center, available to the governing authority of any county or municipality; for any applicant or licensee in a specified occupation for which such local governing authority has adopted an ordinance or resolution requiring such applicants or licensees in a particular occupation or profession regulated by the governing authority to be fingerprinted as a condition of submitting an application or obtaining or renewing a license. The center shall establish a uniform method of obtaining criminal history records required under this paragraph. Such uniform method shall require the submission to the center of two complete sets of fingerprints and the records search fee. Upon receipt thereof, the center shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its own records and records to which it has access. After receiving the fingerprints and fee, the center shall notify the requesting local government authority in writing of any derogatory finding, including, but not

limited to, any criminal record data regarding the fingerprint records check or if there is no such finding. Nothing in this paragraph shall prevent the local governing authority from obtaining national criminal history records directly from the Federal Bureau of Investigation, if an ordinance or resolution requiring the fingerprints of an applicant or licensee of a particular occupation or profession regulated by the local governing authority has been adopted by such governing authority of the county or municipality; and

~~(2)~~(3) Charge fees for disseminating records pursuant to this Code section which will raise an amount of revenue ~~which~~ that approximates, ~~as nearly as practicable, the direct and indirect~~ costs to the state for providing such disseminations.

(b) In the event an employment or licensing decision is made adverse to a person whose ~~record was~~ records were obtained pursuant to this Code section, the person ~~will~~ shall be informed by the public agency, political subdivision, authority or instrumentality, or licensing or regulatory agency making the adverse ~~employment~~ decision of all information pertinent to that decision. This disclosure shall include information that ~~a record was~~ records were obtained from the center, the specific contents of ~~the record~~ such records, and the effect ~~the record~~ such records had upon the decision. Failure to provide all such information to the person subject to the adverse decision shall be a misdemeanor.

(c) Neither the center, its employees, nor any agency or employee of the state shall be responsible for the accuracy of information disseminated nor have any liability for defamation, invasion of privacy, negligence, ~~nor~~ or any other claim in connection with any dissemination pursuant to this Code section and shall be immune from suit based upon such claims.

(d) Local criminal justice agencies may disseminate Georgia criminal history records without fingerprint comparison, prior contact with the center, or consent of the person whose criminal records are requested to public agencies, political subdivisions, authorities, and instrumentalities, including state or federal licensing and regulatory agencies, under the same conditions as set forth in paragraph (1) of subsection (a) of this Code section and may charge fees as necessary to reimburse such agencies for their direct and indirect costs associated with providing such disseminations. Such agencies shall have the same immunity as provided in subsection (c) of this Code section.

~~(d.1) When identifying information provided is sufficient to identify persons whose records are requested, local criminal justice agencies may disseminate criminal history records of in-state felony convictions, pleas, and sentences without:~~

~~(1) Fingerprint comparison;~~

~~(2) Prior contact with the center; or~~

~~(3) Consent of the person whose records are requested.~~

Such information may be disseminated to entities to which such records may be made available under subsection (d) of this Code section under the conditions specified in subparagraph (a)(1)(B) of this Code section upon payment of the fee for the request and when the request is made upon a form prescribed by the center. Such agencies may charge and retain fees as needed to reimburse such agencies for the direct and indirect costs of providing such information and shall have the same immunity therefor as provided in subsection (c) of this Code section.

(d.2)(e) No fee charged pursuant to subsection (d) of this Code section may shall exceed \$20.00 per person whose criminal history ~~record is~~ records are requested or shall be charged to any person or entity authorized prior to January 1, 1995, to obtain information pursuant to this Code section without payment of such fee.

(e)(f) The council is shall be empowered to adopt rules, regulations, and forms necessary to implement this Code section. The council shall promulgate regulations to ensure the identity, confidentiality, and security of all records and data provided in accordance with this Code section."

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.